IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5647 OF 2004

Shafique Rafiq Ansari ... Applicant

versus

The State of Maharashtra ... Respondent

...

Ms. Anjali Patil Contractor, for the Applicant.

Mr. A.S. Gadkari, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

23rd December 2004

P.C.:

. Heard Counsel for the parties. Perused the record. The argument canvassed before this Court on behalf of the Applicant is that the prosecutrix's version is not supported by the medical evidence. The medical evidence does not even remotely indicate that any injuries have been caused to the person of the prosecutrix, much less any penetration having taken place. In other words, it is argued that in this case there is no material to support the prosecution version

in respect of the alleged offence. To get over this position, learned A.P.P. has placed reliance on the decision of the Apex Court in A.I.R. 2004 S.C. 1497 in the case of Aman Kumar and another v. State of Haryana to contend that even if penetration is not established from the record, the Applicant can still be held guilty for offence of having attempted to commit rape. Accepting the submission canvassed on behalf of the State, even so the fact remains that investigation is complete, charge sheet has been filed and the Applicant is already in custody since more than one year and there are no prospects of early trial, and the sentence for the offence of attempting to commit rape will not be as severe as for having committed rape; taking overall view of the matter, the Applicant deserves to be enlarged on bail on the following terms.

(a) The Applicant be released on bail in connection with CR. No. 156/2003 registered with Shivaji Nagar Police Station on executing personal bond in the sum of Rs. 25,000/- (Rupees twenty five thousand only) with two local sureties in

the like amount.

(b) The Applicant shall not enter the jurisdiction of Shivaji Nagar Police Station during the pendency of the trial and, instead, shall report to the nearest Police Station where he intends to reside once in fortnight on every Saturday between 10 a.m. to 12 p.m.

(c) The Applicant shall not influence the prosecution witnesses nor shall tamper with the prosecution evidence in any manner whatsoever.

(d) The Applicant shall extend necessary co-operation for early disposal of the trial. If the trial Court is of the opinion that the Applicant is responsible for the delay in disposal of the trial, that fact be recorded in the roznama, which can be a ground for cancellation of bail.

. Application disposed of on the above terms.

(A.M.KHANWILKAR,J.)